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January 21, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room TWB-204
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: *Ex Parte* - CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Information
and Other Carrier Information

Dear Ms. Salas:

Earlier today, Judy Sello and I, both of AT&T, met with Margaret Egler, William Agee, Anthony Mastando, and Eric Einhorn, (all of the Common Carrier Bureau's Policy Division), and Peter Wolfe of the Wireless Telecommunications Bureau's Policy Division. We discussed AT&T's positions as previously presented in this proceeding.

In particular, we discussed: (1) why the prohibition on the use of CPNI for customer winback purposes is anti-competitive and deprives consumers of essential benefits of competition, (2) the use of CPNI to market CPE and information services, and (3) the inadequacy of BOC CPNI safeguards. The materials used during this discussion are attached.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Charles Griffin".

Attachment

cc: W. Agee
E. Einhorn
P. Wolfe

M. Egler
A. Mastando

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List ABCDE

AT&T'S CPNI RECONSIDERATION POSITIONS

I. WINBACK

-Prohibition on use of CPNI for winback is anticompetitive and deprives consumers of essential benefits of competition: obtaining least costly and most useful service from carrier (customized offers)

-No statutory prohibition

-222(d)(1) allows use of CPNI to initiate and render service to former customer

-No privacy issue: customers expect carriers to try to win them back

-Discriminatory use of CPNI (e.g., ILEC abuse of its gatekeeper function is prohibited by 222(b) and 201(b))

-ILEC bottleneck facilities, ubiquitous local service, presubscription databases, access services

-FCC correctly recognized limitations on ILEC marketing use of CPNI in Slamming Order (12/23/98)

II. CPE AND INFORMATION SERVICES

A. WIRELESS SERVICES

-All wireless carriers should be permitted to use wireless CPNI to market mobile phones and information services

-Wireless phone is "necessary to or used in the provision of telecommunications service" under 222(c)(1)

-Digital phone must be activated and programmed by the wireless carrier and is integral part of the licensed Title III radio service

-Information services (voice mail, short messaging) promote efficiency: save battery life, turn-off phone and receive messages, promote safety

-CCB's May 21, 1997 Clarification Order permitted use of wireless CPNI only if carrier had previously sold phone or information service to the customer

B. LANDLINE SERVICES

-ILECs should not be permitted to use local CPNI to market CPE and information at this time

-Use of local CPNI would permit ILECs to leverage their local monopoly power into the competitive CPE and information services markets

-Competitive carriers (IXCs, CLECs) should be permitted to count within the total service relationship CPE and information services related to the telecommunications service to which the customer subscribes

-No issue of leveraging in competitive markets

-Optional aspects of the service

-Construe 222(c)(1) to allow or forbear under Section 10(a)

-At minimum, allow use of CPNI to market CPE and information services closely related to the underlying telecom service

-Customized billing, enhanced announcements on toll-free calls, voice mail for virtual private networks that enable customers to track, manage and perform diagnostics

III. GRANDFATHER PRE-EXISTING AT&T APPROVALS

-Consistent with 222(c)(1) "approval"

-Annoying and confusing to customers to resolicit approval

-Cost \$70 million to solicit 27 million customers (85.9% approval)

-AT&T would provide written notice of rights and advise customers of right to withdraw prior approval

IV. INADEQUACY OF BOC CPNI SAFEGUARDS (272 and 274)

-Although section 222 does not generally impose differing requirements on various categories of carriers, sections 272 and 274 impose explicit additional nondiscrimination obligations on BOCs

-Section 272(c)(1)'s unqualified nondiscrimination obligation requires BOCs to treat all other entities in the same manner in which they treat their section 272 affiliates

-FCC had correctly concluded in Docket 96-149 that a BOC must provide to unaffiliated entities the same goods, services and information that its provides its section 272 affiliate at same rates, terms and conditions

-Joint marketing provisions do not alter these obligations because access to BOC CPNI is not a component of marketing or sales activity

-CPNI Order improperly reversed this decision

-**Unlawful result:** BOC and its long distance affiliate will be able to share CPNI without explicit customer consent, **but**

Unaffiliated long distance provider would need affirmative written consent to gain access to customer's BOC CPNI

-CPNI Order grants BOC LD affiliate an unfair marketplace advantage due to its affiliation with the BOC, contrary to 272 safeguards

A. BOC DUTIES, TAKING SECTIONS 222 and 272 TOGETHER

-A BOC cannot use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of its section 272 affiliate, unless the CPNI is made available to all competing entities on nondiscriminatory terms

-If the section 272 affiliate obtains express written consent (in the same manner than any other unaffiliated third party could), then the BOC may disclose CPNI to its 272 affiliate without disclosing it to unaffiliated entities

-However, if a BOC uses CPNI without customer consent (or any form of consent other

than affirmative written consent), it must disclose the CPNI to all other entities desiring access to it on the same terms and conditions

-Similar analysis governs the interplay between Sections 222 and 274

B. BOC SOLICITATION OF CUSTOMER APPROVAL TO USE CPNI

-If a BOC solicits customer approval to use CPNI on behalf of, or to disclose CPNI to, its section 272 or 272 affiliate, it must offer an "approval solicitation service" to unaffiliated entities, otherwise it would be engaging in preferential conduct towards its affiliate

-To be nondiscriminatory, a BOC would have to obtain approval for disclosure of the CPNI to all competing entities at the same time as for its affiliate; and the CPNI must be made available to any unaffiliated entity desiring to receive it under the same terms and conditions, and at the same time, as to the BOC-affiliated entity

C. PROPOSED RULES TO REFLECT:

• **Interplay of Sections 222 and 272**

"(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the affiliate required by section 272 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 272 affiliate itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI."

"(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 272 affiliate, the BOC must simultaneously seek such authorizations on behalf of its section 272 affiliate and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI for the benefit of its section 272 affiliate, until the transaction has been posted and a 10-day waiting period has elapsed."

• **Interplay of Sections 222 and 274**

"(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the separated affiliate, electronic

publishing joint venture, or teaming or business arrangement under section 274 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 274 separated affiliate, electronic publishing joint venture, or teaming arrangement itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI."

"(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement, the BOC must simultaneously seek such authorizations on behalf of such entity and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement until the transaction has been posted and a 10-day waiting period has elapsed."

D. OTHER ILEC NONDISCRIMINATION DUTIES

-All ILECs have the ability to leverage local monopoly CPNI into long distance and wireless markets

-To check ILECs' ability to exploit local monopoly CPNI, FCC should apply, per sections 201(b) and 202(a), explicit nondiscrimination duties (as AT&T urges 272 requires for BOC LD affiliates) to all ILECs' use of local CPNI

-Thus, no ILEC should be permitted to use local CPNI or other customer information for marketing long distance or wireless services without making the same information available to competitors under the same circumstances, unless its long distance or wireless affiliate obtained affirmative written consent from the customer, just as an unaffiliated carrier would have to do to gain access to that customer's ILEC CPNI

V. ELECTRONIC SAFEGUARDS

-Flagging and Electronic Auditing separately addressed in filed CPNI Coalition Ex Parte (Ameritech 1/11/99 Letter with proposal attached) and AT&T 1/12/99 Explanatory Letter)